

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**KURT THOMPSON, Successor Trustee of the JOSEPH O'CONNOR and MARY
O'CONNOR TRUST DATED APRIL 13, 2002,**

Respondent,

v.

AMBER CROWLEY KOENEN,

Respondent,

SHAINA CROWLEY, CAITLYNN CROWLEY, CASSANDRA CROWLEY,

Appellants,

RANDY G. CROWLEY, JR.,

Respondent.

DOCKET NUMBER WD74549

Date: March 26, 2013

Appeal from:
Clinton County Circuit Court
The Honorable Paul T. Luckenbill, Jr., Judge

Appellate Judges:
Division Three: Alok Ahuja, P.J., Victor C. Howard and Gary D. Witt, JJ.

Attorneys:
Stephen K. Griffin, for Respondent Kurt Thompson, Cameron, MO, for appellant.
William M. Quitmeier, for Shaina, Caitlynn and Cassandra Crowley, Kansas City, Mo; Arthur A.
Benson, II for Amber Koenen, Kansas City, MO; and Randy Crowley, Jr., Acting Pro Se,
O'Fallon, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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In April 2002, Joseph O'Connor and Mary O'Connor, husband and wife, created a trust (the "Joint Trust") which was revocable during their lifetimes, but became irrevocable following the death of either spouse. The Joint Trust provided that, following the death of both of the O'Connors, the income and principal in the Joint Trust would be transferred, in equal shares, to their five grandchildren. The O'Connors transferred their home into the Joint Trust in May 2002.

Mr. O'Connor died in July 2003. Following his death, Mrs. O'Connor executed a warranty deed in July 2005 which purported to transfer the O'Connors' residence from "Mary O'Connor, a single person," to Mrs. O'Connor in her capacity as trustee of a New Trust she had created. In January 2007, Mrs. O'Connor executed another warranty deed, which transferred her home from the New Trust to herself. On the same day, she executed a beneficiary deed providing that the home would transfer to one of her grandchildren, Amber Koenen, on Mrs. O'Connor's death.

Mrs. O'Connor died in September 2007.

Following Mrs. O'Connor's death, the Koenens moved into the O'Connors' house, and paid all expenses, including utilities, insurance, and taxes, for the home.

In 2010, Mrs. O'Connor's attorney was informed that the residence remained titled to the Joint Trust. The Successor Trustee of the Joint Trust commenced a lawsuit against the five beneficiaries of the Joint Trust, seeking a declaration that the July 2005 warranty deed was effective to transfer the residence out of the Joint Trust, and ultimately to Koenen.

Following a bench trial, the circuit court found that Mrs. O'Connor intended to transfer the residence to Koenen, and concluded that the land records must be corrected to reflect this intent. To implement its findings, the circuit court ordered the Successor Trustee to execute a Trustee's deed transferring the Joint Trust's interest in the O'Connors' home to Koenen. The O'Connors' remaining grandchildren appeal.

AFFIRMED.

Division Three holds:

The evidence was sufficient for the trial court to reform the July 2005 warranty deed based on mutual mistake, to identify the grantor as Mrs. O'Connor, in her capacity as trustee of the Joint Trust. The evidence indicated that, in July 2005, Mrs. O'Connor held the mistaken belief that she personally owned the residence 2005, and that her intent was to make the Joint Trust's dispositive scheme inapplicable to the residence, so that she could leave it to Koenen. Mrs. O'Connor believed that the warranty deed she executed in July 2005 was effective to transfer the residence into the New Trust. The evidence also indicates that Mrs. O'Connor was prepared to withdraw property from the Joint Trust, as necessary to effectuate her intentions.

The Declaration of Trust for the Joint Trust did not prohibit Mrs. O'Connor from withdrawing the residence from the Joint Trust following Mr. O'Connor's death. Although the Declaration of Trust states that its terms cannot be modified following the death of either spouse, it also provides that the trustee of the Joint Trust may make gifts of trust property to any individual beneficiary of the Joint Trust, and that a grantor may withdraw property from the Joint Trust "at any time," without such withdrawal being considered an amendment or revocation of the Joint Trust. While Mr. O'Connor may have anticipated that his five grandchildren would share equally in the O'Connors' estate following the death of both of them, he also expressed the intention, in the Declaration of Trust, to give Mrs. O'Connor substantial authority to deal with their property as she saw fit, if she survived him.

Before: Division Three: Alok Ahuja, P.J., Victor C. Howard and Gary D. Witt, JJ.

Opinion by: Alok Ahuja, Judge

March 26, 2013

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